

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
J.A. MAKSYM, J.R. PERLAK, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**STACEY E. TRAVAN
LOGISTICS SPECIALIST SEAMAN RECRUIT (E-1), U.S. NAVY**

**NMCCA 201000448
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 28 April 2010.

Military Judge: CDR Bethany Payton-O'Brien, JAGC, USN.

Convening Authority: Commanding Officer, USS RONALD REAGAN
(CVN 76).

Staff Judge Advocate's Recommendation: LCDR L.E. Bishop,
JAGC, USN.

For Appellant: LT Brian A. Whitaker, JAGC, USN.

For Appellee: CAPT Martin Grover, JAGC, USN; Capt Mark V.
Balfantz, USMC.

23 November 2010

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his pleas, of failure to obey a lawful order, two false official statements, larceny, wrongful appropriation, and soliciting another to be an accessory after the fact to larceny, in violation of Articles 92, 107, 121, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 921, and 934. The appellant was sentenced to confinement for 125 days, forfeiture of \$350.00 pay per month for four months and a

bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged, but pursuant to a pretrial agreement, suspended all confinement in excess of ninety days for the period of confinement served, plus twelve months.

The appellant avers that a bad-conduct discharge is inappropriately severe. We find the assigned error to be without merit and conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

Background

The appellant served aboard the USS RONALD REAGAN (CVN 76) performing entry-level supply and logistics duties. Counseled in writing on the prohibition against intimate shipboard relationships, he wrongfully had sexual intercourse with a shipmate on divers occasions. He engaged in various shipboard larcenies from fellow shipmates, stealing personal electronics from them as they slept. He wrongfully appropriated and withheld accountable issued organizational military clothing, putting it to use as would-be collateral to ensure the return of his stolen wares from a shipmate he solicited to become an accessory after the fact to his larcenies. To complete the cycle, this accessory was the same shipmate he wrongfully had sexual intercourse with. As the disappearance of the military property and later personal property was being investigated, he gave false official statements.

Sentence Severity

The assignment of error asserts that the sentence to a bad-conduct discharge was inappropriately severe. We disagree and decline to grant relief.

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

The appellant's misconduct, described herein, constitutes an affront to the orders necessary to ensure the mission success of a carrier at sea. This misconduct was similarly an affront to the essential trust of fellow shipmates, necessitated by close-quarters, communal living at sea. Confronted with these matters, the appellant then willfully lied to those investigating his transgressions. Aside from the serious nature of the appellant's offenses, we also note that the appellant's character demonstrates a significant lack of rehabilitative

potential as evidenced by the four separate occasions prior to trial for which the appellant received nonjudicial punishment. We find that the sentence is appropriate for this offender and his offenses. *United States v. Baier*, 60 M.J. 382, 384-85 (C.A.A.F. 2005); *Healy*, 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. Granting sentence relief at this point would be to engage in clemency, a prerogative reserved for the CA, and we decline to do so. *Healy*, 26 M.J. at 395-96. The assigned error is without merit.

Conclusion

Accordingly, we affirm the findings and the sentence as approved by the CA.

For the Court

R.H. TROIDL
Clerk of Court